

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 07, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SHAWN C.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 1:23-cv-03040-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

Due to major depressive disorder, anxiety disorder, personality disorder, attention deficit hyperactivity disorder (ADHD), obesity and diabetes, Plaintiff Shawn C. claims she is unable to work fulltime and applied for disability insurance benefits and supplemental security income benefits. She appeals the denial of benefits by the Administrative Law Judge (ALJ) on the grounds that the ALJ improperly assessed Plaintiff's credibility, and the ALJ improperly analyzed the

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

1 opinions of the evaluating medical sources, Dr. Genthe, Dr. Nelson, and
2 Dr. Eisenhower. As is explained below, the ALJ erred. This matter is remanded for
3 further proceedings.

4 I. Background

5 In June 2020, Plaintiff applied for benefits under Title 2 and Title 16,
6 claiming disability beginning May 30, 2011, based on the physical and mental
7 impairments noted above.²

8 After the agency denied Plaintiff benefits, ALJ Meyers held a telephone
9 hearing in April 2022 at which Plaintiff appeared with her representative.³
10 Plaintiff and a vocational expert testified.⁴ Plaintiff testified that she last worked
11 full-time in 2011 but lost her job when a co-worker with seniority took her job and
12 that in the year following her house burned down, her mother died, and she “lost
13 everything else, one thing after another.”⁵

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19 ² AR 214, 223.

20 ³ AR 39-63.

21 ⁴ *Id.*

22 ⁵ AR 51-52.

1 After the hearing, the ALJ issued a decision denying benefits.⁶ The ALJ
2 found Plaintiff's alleged symptoms were not entirely consistent with the medical
3 evidence and the other evidence.⁷ As to medical opinions: the ALJ found:

- 4 • The opinions of state agency evaluator Gary L. Nelson, PhD, to be
5 persuasive.
- 6 • The opinions of state agency evaluator Renee Eisenhauer, PhD, to be
7 more persuasive.
- 8 • The opinions of examining source Thomas Genthe, PhD, to be
9 unpersuasive.⁸

10 As to the sequential disability analysis, the ALJ found:

- 11 • Plaintiff met the insured status requirements through March 31,
12 2014.
- 13 • Step one: Plaintiff had not engaged in substantial gainful activity
14 since May 30, 2011, the alleged onset date.
- 15 • Step two: Plaintiff had the following medically determinable severe
16 impairments: depressive disorder, anxiety disorder, personality
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19 ⁶ AR 12-34. Per 20 C.F.R. §§ 404.1520(a)–(g), 416.920(a)-(g), a five-step evaluation
20 determines whether a claimant is disabled.

21 ⁷ AR 22-25.

22 ⁸ AR 27.
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1 disorder, and ADHD. The ALJ also found that obesity, hypertension,
2 and diabetes were non-severe.⁹

- 3 • Step three: Plaintiff did not have an impairment or combination of
4 impairments that met or medically equaled the severity of one of the
5 listed impairments.
- 6 • RFC: Plaintiff had the RFC to perform a full range of medium work
7 with the following exceptions:

8 She can remember, understand, and carry out simple and
9 routine instructions and tasks consistent with the learning and
10 training requirements of SVP level one and two jobs. She can
11 have no contact with the public. She can work in proximity to but
12 not in coordination with co-workers. She can have occasional
contact with supervisors. She can work only in routine,
predictable work environment with few changes. She cannot
perform fast-paced production work and can only perform jobs
with short training periods.

- 13 • Step four: Plaintiff is unable to perform past relevant work of a
14 composite job as a fast-food cook, a cook helper/prep cook, and a
15 cashier II.
- 16 • Step five: considering Plaintiff's RFC, age, education, and work
17 history, Plaintiff could perform work that existed in significant
18 numbers in the national economy, such as a cleaner of laboratory
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21 ⁹ Although the ALJ referenced Plaintiff as being "hyperactive" it is clear that he
22 intended to state "hypertensive." *See, e.g.*, AR 18.
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1 equipment (DOT 381.687-022), hand packager (DOT 920.587-018),
2 and floor waxer (DOT 381.687-034).¹⁰

3 Plaintiff timely requested review of the ALJ's decision by the Appeals
4 Council and now this Court.¹¹

5 II. Standard of Review

6 The ALJ's decision is reversed "only if it is not supported by substantial
7 evidence or is based on legal error,"¹² and such error impacted the nondisability
8 determination.¹³ Substantial evidence is "more than a mere scintilla but less than a
9 preponderance; it is such relevant evidence as a reasonable mind might accept as
10 adequate to support a conclusion."¹⁴

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12 ¹⁰ AR 15-30.

13 ¹¹ AR 198.

14 ¹² *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. §§ 405(g),
15 1383(g).

16 ¹³ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other*
17 *grounds by* 20 C.F.R. §§ 404.1520(a), 416.920(a) (recognizing that the court may
18 not reverse an ALJ decision due to a harmless error—one that "is inconsequential
19 to the ultimate nondisability determination").

20 ¹⁴ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
21 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
22 court "must consider the entire record as a whole, weighing both the evidence that
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III. Analysis

Plaintiff seeks relief from the denial of disability on two grounds. She argues the ALJ erred when evaluating Plaintiff's subjective complaints and the medical opinions. The Commissioner argues there was no error because the ALJ properly evaluated Plaintiff's subjective complaints and considered that objective medical evidence undermined Plaintiff's complaints, Plaintiff had gaps in treatment which she did not adequately explain, Plaintiff's daily activities were not consistent with her allegations, and Plaintiff's condition would have improved with treatment, and the ALJ properly evaluated the opinion evidence. The Court disagrees with the Commissioner. As is explained below, the ALJ's analysis contains consequential error.

A. Symptom Reports: Plaintiff establishes consequential error.

Plaintiff argues the ALJ failed to provide valid reasons for discounting her mental symptom reports. The ALJ offered several reasons for discounting Plaintiff's symptom reports—each reason is addressed below.

supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

1 1. Standard

2 The ALJ must identify what symptom claims are being discounted and
3 clearly and convincingly explain the rationale for discounting the symptoms with
4 supporting citation to evidence.¹⁵ This requires the ALJ to “show his work” and
5 provide a “rationale . . . clear enough that it has the power to convince” the
6 reviewing court.¹⁶

7 When examining a claimant’s symptoms, the ALJ utilizes a two-step inquiry.
8 “First, the ALJ must determine whether there is objective medical evidence of an
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10 ¹⁵ *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022). Factors to be considered by
11 the ALJ when evaluating the intensity, persistence, and limiting effects of a
12 claimant’s symptoms include: 1) daily activities; 2) the location, duration,
13 frequency, and intensity of pain or other symptoms; 3) factors that precipitate and
14 aggravate the symptoms; 4) the type, dosage, effectiveness, and side effects of any
15 medication the claimant takes or has taken to alleviate pain or other symptoms; 5)
16 treatment, other than medication, the claimant receives or has received for relief of
17 pain or other symptoms; 6) any non-treatment measures the claimant uses or has
18 used to relieve pain or other symptoms; and 7) any other factors concerning the
19 claimant’s functional limitations and restrictions due to pain or other symptoms.

20 Soc. Sec. Rlg. 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§ 404.1529(c), 416.929(c);
21 *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014).

22 ¹⁶ *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (alteration added).
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1 underlying impairment which could reasonably be expected to produce the pain or
2 other symptoms alleged.”¹⁷ Second, “[i]f the claimant meets the first test and there
3 is no evidence of malingering, the ALJ can only reject the claimant’s testimony
4 about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing
5 reasons’ for the rejection.”¹⁸ General findings are insufficient; rather, the ALJ must
6 identify what symptom claims are being discounted and what evidence undermines
7 these claims.¹⁹ “The clear and convincing standard is the most demanding required
8 in Social Security cases.”²⁰ Therefore, if an ALJ does not articulate specific, clear,
9 and convincing reasons to reject a claimant’s symptoms, the corresponding
10 limitations must be included in the RFC.²¹

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12 ¹⁷ *Molina*, 674 F.3d at 1112.

13 ¹⁸ *Ghanim* 763 F.3d at 1163(quoted *Lingenfelter*, 504 F.3d at 1036).

14 ¹⁹ *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), and *Thomas v.*
15 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
16 explain why he discounted claimant’s symptom claims)).

17 ²⁰ *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
18 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

19 ²¹ *Lingenfelter*, 504 F.3d at 1035 (“[T]he ALJ failed to provide clear and convincing
20 reasons for finding Lingenfelter’s alleged pain and symptoms not credible, and
21 therefore was required to include these limitations in his assessment of
22 Lingenfelter’s RFC.”).

2. Plaintiff's Testimony

On April 21, 2022, Plaintiff appeared with her attorney for a hearing before ALJ Meyers.²² Plaintiff testified and vocational expert Francine Geers testified.²³ Plaintiff testified that she was 48 years old and lived with her husband.²⁴ Plaintiff said that she has a driver's license and drives her husband's car to go to the grocery store.²⁵ She said that she shops alone but on some days will turn around and go home because she does not want to deal with people.²⁶ Plaintiff testified that her husband recently had surgery to remove his large toe but that he was caring for himself.²⁷ Plaintiff said her 22-year-old son lives with them and works part-time but does not contribute to the household because he pays his own bills and that they are renting to own the home they live in and have four years of payments left to make.²⁸ Plaintiff said that neither her son nor her husband have any physical or mental impairments but that her husband was trying to get paid under the Family

²² AR 39-63.

²³ AR 41.

²⁴ AR 45.

²⁵ AR 45-46.

²⁶ AR 46.

²⁷ *Id.*

²⁸ AR 47.

1 Medical Leave Act because of his recent surgery.²⁹ She explained that her husband
2 works the night shift in a food warehouse as a sanitation worker and that during
3 the day he is usually sleeping or watching television.³⁰

4 Plaintiff testified that she had not left the area in the last couple years and
5 had not traveled out of state in over twenty years.³¹ She said she has no source of
6 income and stopped receiving public benefits when her husband started working,
7 about a year prior.³² She said her son helps around the house and takes cares of
8 her dog and her cats.³³ Plaintiff said that her mental illness began about ten years
9 prior and that she had not worked even part-time since 2011.³⁴ She said that her
10 mental health issues began after she lost her job and that she lost her job when
11 they closed one of the branches and a person with seniority took her job.³⁵ She said
12 that if she had not lost her job she did not think she would have been able to work
13 because in 2011 her father was hospitalized, her mother died, and she lost her
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16 ²⁹ AR 47-48.

17 ³⁰ AR 48.

18 ³¹ AR 48-49.

19 ³² AR 49.

20 ³³ AR 49-50.

21 ³⁴ AR 50.

22 ³⁵ AR 50-51.

1 house.³⁶ Plaintiff said she had a gap in mental health treatment from June 2017 to
2 December 2019 because she lost her health insurance, she had a verbal dispute
3 with her counselor, and her counselors changed locations and were temporarily
4 closed.³⁷ She said she did not go to other counselors because she did not know any
5 others who treated people without insurance in the area.³⁸ She said she currently
6 had Obamacare insurance.³⁹ Plaintiff testified that during covid she did not get
7 treatment because she was told she could not go anywhere and she was not offered
8 telehealth because her counselor left and she was told she needed to find a new
9 counselor.⁴⁰

10 Plaintiff said that when she applied for public assistance a psychologist
11 called her and interviewed her.⁴¹ She described a panic attack as not being able to
12 breath, getting shaky and feeling like she would pass out and said that they last
13 anywhere from thirty minutes to three hours but that her medication helps.⁴² She
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16 ³⁶ AR 51.

17 ³⁷ AR 52.

18 ³⁸ AR 52-53.

19 ³⁹ AR 53.

20 ⁴⁰ AR 53.

21 ⁴¹ AR 53-54.

22 ⁴² AR 55.

1 said that they changed her from Xanax to lorazepam because of side effects.⁴³ She
2 said that if she has a panic attack when she is out she will have to leave and go
3 back in about two hours.⁴⁴ She said that she will get about two panic attacks a
4 week if she is not going out anywhere and about three or four if she is going out.⁴⁵
5 She said she has two or three days a week when she will not leave her room.⁴⁶

6 3. The ALJ's Findings

7 The ALJ found Plaintiff's statements concerning the intensity, persistence,
8 and limiting effects of her "medically determinable impairments" partially
9 inconsistent with the objective medical evidence, inconsistent with the fact that she
10 had not more diligently sought treatment, inconsistent with her daily activities,
11 and caused primarily by economic circumstances which were not a basis for
12 disability.⁴⁷

13 4. Relevant Medical Records

14 Plaintiff's record is limited but indicates treatment for both physical and
15 mental impairments.

18 ⁴³ *Id.*

19 ⁴⁴ AR 55-56.

20 ⁴⁵ AR 56.

21 ⁴⁶ *Id.*

22 ⁴⁷ AR 22-25.

1 a. Highline Medical Center

2 On January 18, 2011, Plaintiff presented with back pain.⁴⁸ On examination,
3 Dr. Susan O'Brien noted that Plaintiff appeared to be in pain and was in moderate
4 distress, was oriented, had normal mood and affect, and had no motor deficits.⁴⁹
5 On October 31, 2011, Plaintiff presented with complaints of sudden abdominal
6 pain.⁵⁰ Plaintiff was assessed to be in severe distress but was alert and oriented
7 with no motor deficit.⁵¹

8 On February 29, 2012, Plaintiff presented with flank pain.⁵² On January 18,
9 2013, Plaintiff presented with flank pain.⁵³ On examination, she was noted to be
10 oriented, anxious, and in mild distress.⁵⁴ She was released with a good prognosis.⁵⁵
11 On examination, she was noted to be oriented with no motor deficit.⁵⁶

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14 ⁴⁸ AR 477.

15 ⁴⁹ AR 478.

16 ⁵⁰ AR 458.

17 ⁵¹ AR 459.

18 ⁵² AR 454.

19 ⁵³ AR 443.

20 ⁵⁴ *Id.*

21 ⁵⁵ AR 444.

22 ⁵⁶ *Id.*

b. Comprehensive Healthcare

On April 14, 2014, Plaintiff presented to Chris Clark, LMHC, and Deborah Blaine, LMHC, at the clinic as a walk-in, reporting anxiety, panic attacks, and depression.⁵⁷ She was assessed to be a moderate risk level.⁵⁸ On examination, Plaintiff was anxious; had rapid and pressured speech; was tearful and labile; and endorsed social restriction.⁵⁹ She was diagnosed with major depression, first episode, severe; and assigned a current GAF score of 44 and an estimated high GAF score in the last year of 50.⁶⁰

On May 28, 2014, Plaintiff presented to Shirley Goodman, LMHC, with a tearful and depressed affect and mood and reported that she still had difficulty sleeping.⁶¹

On June 19, 2014, Plaintiff presented to LMHC Goodman for treatment and requesting mood stabilization.⁶² She was assigned a current GAF score of 44 and a highest GAF score of 50 for the last year, which was unchanged from her initial

⁵⁷ AR 300

⁵⁸ AR 301.

⁵⁹ AR 302.

⁶⁰ AR 302-303.

⁶¹ AR 316.

⁶² AR 310.

1 assessment.⁶³ On August 22, 2014, Plaintiff presented to LMHC Goodman
2 reporting sleep disturbance, anxiety, panic attacks, and emotional outbursts.⁶⁴
3 LMHC Goodman noted that Plaintiff's mood was better than at her prior visit.⁶⁵

4 On September 15, 2014, Plaintiff presented to ARNP Carolyn Pingel for a
5 psychiatric evaluation.⁶⁶ Plaintiff reported frequent crying, difficulty sleeping,
6 anxiety, difficulty concentrating, and panic attacks.⁶⁷ Plaintiff reported that her
7 anxiety began in March 2011 when her mother passed away.⁶⁸ Plaintiff reported
8 past psychiatric treatment but no hospitalizations and medication with lorazepam,
9 fluoxetine, and Xanax, but having run out of medication two weeks prior.⁶⁹
10 Plaintiff reported prior treatment with the Farm Workers Clinic but stopped
11 treatment due to money and transportation issues.⁷⁰ On examination, she was
12 oriented with normal speech and thoughts; no delusions, hallucinations, or
13 paranoia; adequate fund of knowledge; fair insight; difficulty with focus and
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15 ⁶³ *Id.*

16 ⁶⁴ AR 313.

17 ⁶⁵ AR 313.

18 ⁶⁶ AR 296.

19 ⁶⁷ *Id.*

20 ⁶⁸ *Id.*

21 ⁶⁹ *Id.*

22 ⁷⁰ AR 297.

1 concentration; decreased energy, depressed mood, constricted affect, and stable gait
 2 with limp.⁷¹ ARNP Pingel diagnosed major depression and anxiety and opined that
 3 Plaintiff had a current GAF of 42 and that her highest GAF in the past year was
 4 44.⁷²

5 On January 6, 2015, Plaintiff presented to LMHC Goodman for treatment
 6 and requesting mood stabilization.⁷³ She was assigned a GAF score of 44.⁷⁴

7 On May 17, 2015, Plaintiff presented to LMHC Goodman, for treatment and
 8 requesting mood stabilization.⁷⁵ She was assigned a GAF score of 44.⁷⁶

9 *c. Farm Workers Clinic*

10 On May 20, 2014, Plaintiff presented to PA Amy Turner for follow up care
 11 after an ER visit for a spider bite.⁷⁷ She was also requesting medication for anxiety
 12 and depression and reported she had not seen a doctor for ten years.⁷⁸ On
 13 examination, Plaintiff was anxious but pleasant, was not tangential, had poor
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15 ⁷¹ AR 297-298.

16 ⁷² AR 298.

17 ⁷³ AR 309.

18 ⁷⁴ *Id.*

19 ⁷⁵ AR 306.

20 ⁷⁶ AR 308.

21 ⁷⁷ AR 324.

22 ⁷⁸ *Id.*

insight and fair eye contact.⁷⁹ On July 2, 2014, Plaintiff presented to PA Turner for follow-up for depression and anxiety.⁸⁰ Plaintiff reported that her medication was helping and that in the last few weeks she had only needed to take six Xanax.⁸¹ On August 22, 2015, Plaintiff presented to PA Turner for an annual examination and was noted to be taking Xanax and fluoxetine.⁸² PA Turner noted that on examination Plaintiff was well-groomed, tearful, with pleasant affect, poor insight, and nontangential speech.⁸³

On December 1, 2016, Plaintiff presented to PA Turner after not coming to the clinic for a year and a half.⁸⁴ Plaintiff reported that she stopped taking her medication because she did not like her counselor but she continues with severe anxiety and moderate depression and wanted to resume treatment.⁸⁵ She was referred to psychiatry.⁸⁶ On March 10, 2017, Plaintiff returned for a follow-up visit with PA Turner and reported that she had tried twice to do an intake with CMH

⁷⁹ AR 325.

⁸⁰ AR 335.

⁸¹ *Id.*

⁸² AR 328.

⁸³ AR 334.

⁸⁴ AR 347.

⁸⁵ *Id.*

⁸⁶ AR 349.

1 for psychiatric care but that there were no appointments available.⁸⁷ PA Turner
2 noted that Plaintiff had severe social phobia and panic attacks when in public.⁸⁸
3 On examination, PA Turner described Plaintiff as tearful and extremely anxious,
4 with non-tangential speech, good eye contact, and fair insight.⁸⁹

5 *d. Memorial Hospital*

6 On May 10, 2014, Plaintiff presented to Wyatt Rivas, MD with an insect bite
7 and was noted to have a history of anxiety but on examination was oriented with
8 normal speech and normal affect.⁹⁰ On January 5, 2015, Plaintiff presented to Joan
9 Knight, MD, with jaw pain and swelling and was noted to have a history of anxiety
10 but on examination was oriented with normal speech and normal affect.⁹¹ On
11 September 30, 2020, Plaintiff presented to John Cooper, DO, with dental pain and
12 missing several teeth. She was noted to be unkempt.⁹² On mental status
13 examination, Plaintiff was noted to have normal mood and affect and to be
14 oriented.⁹³

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16 ⁸⁷ AR 352.

17 ⁸⁸ *Id.*

18 ⁸⁹ AR 353.

19 ⁹⁰ AR 421-422.

20 ⁹¹ AR 415-416.

21 ⁹² AR 399.

22 ⁹³ AR 400.

1 e. Thomas Genthe, PhD

2 On June 16, 2020, Plaintiff was examined by consultative examiner Thomas
3 Genthe, PhD at the request of the Department of Social and Human Services.⁹⁴
4 Plaintiff presented with complaints that she gets anxiety in public with
5 claustrophobia and that she has had agoraphobia since her mother's death in
6 2011.⁹⁵ Plaintiff reported that she is married, living in a rented house, has a
7 drivers license and car, and has no significant difficulty getting along with others.⁹⁶
8 Plaintiff reported that in the past she received treatment and prescribed
9 medication but was currently not receiving treatment or medication, that she
10 completed to the eleventh grade, and that she had not worked since 2011 due to
11 homelessness and anxiety.⁹⁷ Plaintiff denied substance use and said that she has
12 no hobbies but watches television for most of the day.⁹⁸ Plaintiff reported that she
13 is able to bathe and groom herself; prepare meals; perform household activities
14 such as washing dishes, doing laundry, vacuuming, and dusting; managing her
15 medications; scheduling and attending appointments; mailing items; and shopping

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18 ⁹⁴ AR 436-442.

19 ⁹⁵ AR 436.

20 ⁹⁶ *Id.*

21 ⁹⁷ AR 437.

22 ⁹⁸ *Id.*

1 for groceries.⁹⁹ Plaintiff reported the following symptoms of depression: frequent
2 crying and isolating.¹⁰⁰ Plaintiff reported the following symptoms of ADHD: failing
3 to pay attention, being easily distracted, being easily bored, poor follow through,
4 procrastinating, losing things, impulsiveness, fidgeting, and restlessness.¹⁰¹ Dr.
5 Genthe diagnosed Plaintiff with major depressive disorder, with anxious distress,
6 agoraphobia, ADHD, and rule out other Personality Disorder.¹⁰² Dr. Genthe found
7 that Plaintiff had fair to poor insight and judgment, that the chances she would
8 comply with treatment were fair, and that her level of social maturity was poor.¹⁰³

9 On examination, Plaintiff had a normal rate of speech but provided excessive
10 information, she was cooperative and open, she described her mood as alright, and
11 did not present with delusions or hallucinations.¹⁰⁴ Plaintiff presented with a
12 history of depression and anxiety and was tangential and circumstantial in her
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17 ⁹⁹ AR 437-438.

18 ¹⁰⁰ AR 438.

19 ¹⁰¹ *Id.*

20 ¹⁰² *Id.*

21 ¹⁰³ AR 442.

22 ¹⁰⁴ AR 441.

1 thought process.¹⁰⁵ Plaintiff was oriented and had normal perception, memory,
2 fund of knowledge, abstract thought, and concentration.¹⁰⁶

3 Dr. Genthe opined that Plaintiff had the following marked impairments in
4 the following abilities: understand, remember and persist in following detailed
5 instructions; adapt to changes in a routine work setting; communicate and perform
6 effectively in a work setting; maintain appropriate behavior; complete a normal
7 work day or work week without interruption; and set realistic goals.¹⁰⁷ Dr. Genthe
8 opined that Plaintiff had moderate impairments in the following abilities: perform
9 activities in a schedule without special supervision, learn new tasks, be aware of
10 hazards and take precautions, and ask questions or request assistance.¹⁰⁸

11 Dr. Genthe opined that Plaintiff's impairments were not the result of substance
12 use, would be expected to last twelve months, and might be minimized or
13 eliminated with the use of services or vocational training.¹⁰⁹ Dr. Genthe wrote a
14 narrative paragraph explaining that based on his examination Plaintiff suffers
15 from ADHD which is not managed and likely to interfere with employment.¹¹⁰

17 ¹⁰⁵ *Id.*

18 ¹⁰⁶ AR 441-442.

19 ¹⁰⁷ AR 439.

20 ¹⁰⁸ *Id.*

21 ¹⁰⁹ AR 439-440.

22 ¹¹⁰ AR 440.

1 Dr. Genthe recommended treatment for the ADHD symptoms and psychosocial
2 stressors which contribute to her anxiety.¹¹¹ Dr. Genthe opined that Plaintiff's
3 prognosis was moderate and that if she participated in treatment she would need
4 twelve months to effectively treat her condition.¹¹²

5 5. Analysis

6 As an initial matter, the Court notes that the medical record supports
7 Plaintiff's contention that she suffered from severe impairments prior to the date
8 she was last insured on March 31, 2014. While her mental health treatment did
9 not begin until April 14, 2014, two weeks after her date last insured, the counselors
10 who assessed her condition opined that she had a current GAF score of 44 and that
11 the highest her GAF had been in the prior year was 50.¹¹³ Pursuant to the DSM
12 IV, a GAF score of 41-50 indicates "serious symptoms (e.g., suicidal ideation, severe
13 obsessional rituals, frequent shoplifting) OR any serious impairment in social,
14 occupational, or school functioning (e.g., no friends, unable to keep a job)."¹¹⁴
15 Although GAF scores are not contained in later editions of the DSM, they were
16 commonly used at the time of Plaintiff's examination in 2014, and are evidence

18 ¹¹¹ *Id.*

19 ¹¹² *Id.*

20 ¹¹³ AR 302-303.

21 ¹¹⁴ Diagnostic and Statistical Manual of Mental Disorders, DSM IV, Fourth Edition,
22 American Psychiatric Association.

1 that qualified medical sources found Plaintiff to have severe mental impairments of
 2 a long-standing nature. The Court will address the reasons given by the ALJ to
 3 find Plaintiff's subjective complaints less than credible.

4 *a. The ALJ's reasoning that Plaintiff's allegations are inconsistent*
 5 *with the medical record.*

6 The ALJ provided the following reasoning:

7 During appointments, the claimant's treatment providers and
 8 examiners have often observed the claimant with cooperative, pleasant,
 9 friendly, attentive, and conversative behavior (*See e.g.*, 2F8, 17, 31;
 10 3F22, 28; 4F6; 8F6), fair to good eye contact (*See e.g.*, 2F8, 36), and
 11 adequate hygiene and grooming (*See e.g.*, 2F17, 36; 3F22, 27-28). At
 12 times, she has depressed, sad, tearful, liable, anxious, congruent,
 13 unstable, or restricted affect and/or decreased motivation (*See e.g.*, 1F3-
 4, 8, 21-23; 2F8, 17, 31, 36; 9F1), but she generally has an appropriate
 or normal mood and/or affect (*See e.g.*, 1F8; 2F13, 24, 35; 3F5, 21, 27-
 28; 9F1, 8, 12, 28, 35-36). As documented above, her treatment
 providers have typically observed the claimant as being in no acute
 distress during appointments (*See e.g.*, 2F8, 12-13, 24, 26, 31, 35, 38;
 8F4; 9F12, 28, 31-32).¹¹⁵

14 The Court notes that the ALJ has taken notations in medical records that
 15 Plaintiff is in no acute distress out of context. While there is a disorder known as
 16 Acute Stress Disorder,¹¹⁶ a medical notation that a patient is in "no acute distress"
 17 is simply a statement that their condition is stable and they are not in severe pain.
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21 ¹¹⁵ AR 23.

22 ¹¹⁶ Cleveland Clinic, *Acute Stress Disorder*, [www.cleveland clinic.org](http://www.clevelandclinic.org) (Nov. 29, 2023)
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1 While the ALJ has correctly cited to some instances in which Plaintiff has
 2 been noted to have an appropriate mood or affect, he failed to consider that those
 3 findings were made when Plaintiff presented for treatment of physical conditions
 4 and that when she has been evaluated by medical sources trained in psychiatry her
 5 mood and affect have been consistently found to be depressed, anxious, constricted
 6 or otherwise not normal.¹¹⁷ Th ALJ misstated some of these objective findings, and
 7 has taken others out of context. Context is crucial as “treatment records must be
 8 viewed in light of the overall diagnostic record.”¹¹⁸ There was only one treatment
 9 noted referenced by the ALJ which was from a source treating Plaintiff for her
 10 psychiatric conditions rather than a physical impairment, Exhibit 1F, page 8.¹¹⁹

12 ¹¹⁷ See *Diedrich v. Berryhill*, 874 F.3d 634, 641 (9th Cir. 2017) (noting that courts
 13 do “not necessarily expect” someone who is not a mental-health professional to
 14 document observations about the claimant’s mental-health symptoms); *Orn v.*
 15 *Astrue*, 495 F.3d 615, 634 (9th Cir. 2007) (requiring examination notes to be read in
 16 their proper context); see also *Jajo v. Astrue*, 273 F. App’x 658, 660 (9th Cir. 2008)
 17 (not reported) (“The ALJ relied on the lack of corroboration on the part of the
 18 orthopedic consultant and various emergency room reports. However, the purpose
 19 of those visits was not to assess [the claimant]’s mental health, and thus any lack
 20 of corroboration is not surprising.”).

21 ¹¹⁸ *Ghanim*, 763 F.3d at 1164.

22 ¹¹⁹ AR 23.

1 Moreover, the ALJ's assertion that Plaintiff was noted to have a normal mood and
2 affect at Exhibit 1F, pg 8, is clearly in error. The examining sources, LMHC Clark
3 and LMHC Blaine, stated as follows:

4 [Plaintiff] presents as being very anxious, with rapid and pressured
5 speech but denies any episodes of reduced need for sleep or
6 hypomania. She is frequently tearful and labile through the course of
7 the assessment, and is endorsing social avoidance and restriction.¹²⁰

8 Thus, the ALJ's reasoning that the record is inconsistent with her
9 allegations is flawed and not supported by the weight of evidence. As noted above,
10 the treatment records of both Comprehensive Healthcare and Farm Workers
11 Clinic, which treated Plaintiff for her mental conditions, consistently reported
12 abnormality in mood, affect, concentration, and behavior, as well as poor judgment
13 and insight.

14 Additionally, the ALJ reasoned that Plaintiff's subjective complaints were
15 inconsistent with findings on examination that Plaintiff had normal cognition.¹²¹
16 This finding is also flawed. As courts have repeatedly noted, "the treatment
17 records must be viewed in light of the overall diagnostic record," and a claimant's
18 reports of suffering from severe depression and/or anxiety are not necessarily
19 inconsistent with that claimant also presenting with normal cognitive abilities,
20 such as "good eye contact, organized and logical thought content, and focused

21 ¹²⁰ AR 302.

22 ¹²¹ AR 23.

1 attention.”¹²² The ALJ improperly focused on Plaintiff’s cognitive abilities while
 2 ignoring other more relevant and serious symptoms.

3 An ALJ must consider the basis for the limitations and not discount because
 4 of nonrelevant normal findings. *See Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th
 5 Cir. 2014) (finding the ALJ erred by rejecting the claimant’s symptoms resulting
 6 from anxiety, depressive disorder, and PTSD on the basis that claimant performed
 7 cognitively well during examination and had a generally pleasant demeanor).

8 Here, the ALJ largely ignored the psychiatric treatment record and cherry-
 9 picked findings from treatment for physical conditions to contrast with Plaintiff’s
 10 allegations. He discounted relevant findings by citing to findings that were either
 11 nonrelevant or taken out of context. This is error.

12 *b. The ALJ’s reasoning that Plaintiff’s condition improved with*
 13 *treatment.*

14 The ALJ discounted Plaintiff’s reported symptoms because her condition
 15 improved with treatment.¹²³

17 ¹²² *See, e.g., Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) (finding the ALJ
 18 erred by rejecting the claimant’s symptoms resulting from anxiety and depressive
 19 disorder on the basis that the claimant performed cognitively well during
 20 examination and was described as “upbeat,” “smiling very brightly,” and “more
 21 talkative about positive things”).

22 ¹²³ AR 24.

1 A claimant's improvement with treatment is “an important indicator of the
2 intensity and persistence of . . . symptoms.”¹²⁴ Symptom improvement, however,
3 must be weighed within the context of an “overall diagnostic picture,” particularly
4 for mental-disorder symptoms which often wax and wane.¹²⁵ If treatment relieves
5 symptoms to an extent that allows the claimant to return to a level of function she
6 had before she developed mental-disorder symptoms, such treatment can
7 undermine a claim of disability.¹²⁶ Reports of improvement “must be interpreted
8 with an understanding of the patient’s overall well-being and the nature of her
9 symptoms,” as well as with an awareness that “improved functioning while being
10 treated and while limiting environmental stressors does not always mean that a
11 claimant can function effectively in a workplace.”¹²⁷

14 ¹²⁴ 20 C.F.R. §§ 416.929(c)(3), 404.1529(c)(3). *See Warre v. Comm’r of Soc. Sec.*
15 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled
16 effectively with medication are not disabling for the purpose of determining
17 eligibility for SSI benefits.”).

18 ¹²⁵ *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001); *see also Lester v.*
19 *Chater*, 81 F.3d 821, 833 (9th Cir. 1995) (“Occasional symptom-free periods ... are
20 not inconsistent with disability.”).

21 ¹²⁶ *See* 20 C.F.R. §§ 404.1520a(c)(1), 416.920a(c)(1).

22 ¹²⁷ *Garrison*, 759 F.3d at 1017 (cleaned up).

1 The ALJ failed to address the Dr. Genthe's opinion that, even if Plaintiff
2 were to cooperate in a course of treatment, she would require a minimum of twelve
3 months of treatment before she would be able to function adequately or
4 consistently in a work setting.¹²⁸ Moreover, there is no indication in the medical
5 record that Plaintiff's condition improved to the extent that she was capable of
6 work when actively in treatment, nor did the ALJ cite to any such evidence. As
7 such, Dr. Genthe's opinion stands uncontroverted and the ALJ erred in ignoring it
8 without adequately explaining his reasoning.

9 c. The ALJ's reasoning that Plaintiff failed to seek treatment

10 The ALJ also discounted Plaintiff's reported symptoms because she failed to
11 engage in treatment. A claimant's course of treatment, including an inadequately
12 explained failure to seek treatment, is a relevant factor for the ALJ to consider
13 when assessing the claimant's symptom reports.¹²⁹ Yet, the ALJ must discuss
14 whether the claimant had good cause for not seeking treatment, including whether
15 the mental impairment contributed to her not seeking rehabilitation.¹³⁰

17 ¹²⁸ AR 440.

18 ¹²⁹ 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3).

19 ¹³⁰ See *Garrison v. Colvin*, 759 F.3d 995, 1018 n.24 (9th Cir. 2014) (holding an ALJ
20 may not reject a claimant's symptom testimony based on a lack of treatment if "the
21 record affords compelling reason to view such departures from prescribed
22 treatment as part of claimants' underlying mental afflictions");

1 The ALJ rejected Plaintiff's assertion that she had gaps in treatment due to
 2 lack of medical insurance and other financial issues, because Plaintiff had
 3 Medicaid coverage and reliable transportation.¹³¹ The ALJ's reasoning is flawed
 4 for two reasons, first, the record does support Plaintiff's assertion that during
 5 times that her husband was working his earnings were in excess of the limits for
 6 Medicaid and she therefore lost her Medicaid coverage.¹³² Second, the ALJ failed to
 7 consider that multiple medical sources including ARNP Pingel, LMHC Goodman,
 8 PA Turner, and Dr. Genthe noted that Plaintiff had poor insight and lacked insight
 9 into her need for treatment.¹³³ In fact, the best level of insight noted by psychiatric
 10 was fair.

11 When viewed as a whole, the record raises a question of whether Plaintiff's
 12 failure to seek treatment was intentional and willing on her part, or resulted from
 13 her mental illness.

15 *Regennitter v. Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294, 1209–1300 (9th Cir.
 16 1999) (“[I]t is a questionable practice to chastise one with a mental impairment for
 17 the exercise of poor judgment in seeking rehabilitation.”); *Fair v. Bowen*, 885 F.2d
 18 597, 603–04 (9th Cir. 1989); Soc. Sec. Rlg. 18-3p: Titles II and XVI: Evaluation of
 19 Symptoms in Disability Claims.

20 ¹³¹ AR 24.

21 ¹³² AR 49, 52.

22 ¹³³ AR 297, 324, 442

1 6. Summary

2 Because the ALJ did not give good reasons for discounting Plaintiff's
3 symptom reports, a remand is warranted. Moreover, the Court finds that the
4 question of whether Plaintiff's failure to treat is a symptom of her condition
5 requires the opinion of a medical expert. On remand, the ALJ is directed to
6 consider the consistency of Plaintiff's symptoms reports with the record as a whole,
7 and to obtain testimony of a medical expert as stated above.

8 **B. Medical Opinions: Plaintiff established consequential error.**

9 Plaintiff argues the ALJ failed to properly assess the opinions of Dr. Genthe,
10 Dr. Nelson and Dr. Eisenhower as to both supportability and consistency. As
11 discussed above, the ALJ failed to consider the medical record as a whole. Because
12 the Court has remanded the case for consideration of the record as a whole, the
13 ALJ will be required to consider the consistency of the medical opinions with that
14 of the medical advisor.

15 **C. Remand for Further Proceedings**

16 Plaintiff submits a remand for payment of benefits is warranted. The
17 decision whether to remand a case for additional evidence, or simply to award
18 benefits, is within the discretion of the court."¹³⁴ When the court reverses an ALJ's
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21 ¹³⁴ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
22 761 F.2d 530 (9th Cir. 1985)).
23

1 decision for error, the court “ordinarily must remand to the agency for further
2 proceedings.”¹³⁵

3 The Court finds that further development is necessary for a proper disability
4 determination. Here, it is not clear what, if any, additional limitations are to be
5 added to the RFC. Therefore, the ALJ is to obtain testimony from a medical expert
6 pertaining to Plaintiff’s mental impairments, consider additional evidence
7 presented, and make findings at each of the five steps of the sequential evaluation
8 process.

9 IV. Conclusion

10 Accordingly, **IT IS HEREBY ORDERED:**

- 11 1. The ALJ’s nondisability decision is **REVERSED**, and this matter is
12 **REMANDED** to the Commissioner of Social Security for further
13 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
- 14 2. The Clerk’s Office shall **TERM** the parties’ briefs, **ECF Nos. 10 and**
15 **12**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

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19 ¹³⁵ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
20 (“[T]he proper course, except in rare circumstances, is to remand to the agency for
21 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,
22 775 F.3d 1090, 1099 (9th Cir. 2014).

1 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
2 provide copies to all counsel.

3 DATED this 7th day of December, 2023.

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5 EDWARD F. SHEA
6 Senior United States District Judge
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